

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0566
Individual Adjusted Gross Income Tax
For the Year 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Proposed Assessment – Indiana Individual Income Tax.

Authority: IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); IC 6-8.1-5-1(c).

Taxpayers argue that Department of Revenue acted outside of its authority in issuing a "Proposed Assessment" of additional Indiana income taxes.

II. Voluntary Compliance with the State's Adjusted Gross Income Tax.

Authority: IC 6-8.1-11-2; Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985).

Taxpayers maintain that the state's income tax is based on "voluntary compliance" and that they no longer volunteer to pay state income taxes.

STATEMENT OF FACTS

Taxpayers prepared and submitted a 2001 Income Tax Return. On that return, taxpayers reported that they had zero federal adjusted gross income and requested a refund of the amount of taxes previously withheld. Subsequently, the Department of Revenue (Department) concluded that taxpayers erred and sent taxpayers a notice of "Proposed Assessment." Thereafter, in September of 2002, the taxpayers submitted a protest challenging the proposed assessment of additional tax. The protest was assigned to the hearing officer in December of 2002. Taxpayers were offered the opportunity to explain further the basis for the protest during an administrative hearing but declined the opportunity to schedule a hearing. On February 4, 2003, taxpayers were informed that an administrative hearing had been scheduled on their behalf for March 4, 2003, and were invited to participate in the March 4 hearing or to suggest an alternative date and time for the hearing. Taxpayers forwarded correspondence to the effect that they would be unable to attend the scheduled hearing but were unwilling or unable to suggest an alternative

date. In the absence of any verifiable, substantive reason for further delaying a timely resolution of the taxpayer's protest, this Letter of Findings was prepared which attempts to address the issues raised by taxpayers.

DISCUSSION

I. Proposed Assessment – Indiana Individual Income Tax.

Taxpayers are much aggrieved by the notice of "Proposed Assessment." Taxpayers argue that there is no law which permits the Department to issue such an assessment, that they have already submitted a legitimate return, and that the Department is without authority to correct or amend the information submitted on that original return. As taxpayers state, "The state of Indiana cannot Legally take a taxpayer's LEGAL Indiana IT-40 based on Voluntary Compliance of Self Assessment and change it . . . we being LEGAL do not LEGALLY recognize the ILLEGAL 'PROPOSE ASSESSMENT,' that the Indiana Dept. of Revenue has sent us." (Emphasis in original).

The notice of proposed assessment was rendered pursuant to IC 6-8.1-5-1(a) which states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a *proposed assessment* of the unpaid tax on the basis of the best information available to the department." (*Emphasis added*).

Taxpayers indicated on their 2001 Indiana return that they had received no adjusted gross income during the year. However, the W-2 forms attached to the 2001 return would – on their face – seem to indicate otherwise. Acting pursuant to IC 6-8.1-5-1(a), the Department was entitled to consider the information contained on the W-2 forms and to act accordingly. Taxpayers' arguments to the contrary, the Department was not only entitled to act on that information, but was required to do so. The statute is unambiguous; "The department shall make a proposed assessment of the unpaid tax" *Id.*

Nonetheless, having received the notice of "Proposed Assessment," the taxpayers were authorized, under IC 6-8.1-5-1(c), to contest the notice. However, the taxpayers thereafter were required to demonstrate how the proposed assessment was incorrect. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person[s] against whom the proposed assessment is made." IC 6-8.1-5-1(b).

Despite having been afforded three months in which to explain the basis for challenging the original notice of proposed assessment, the taxpayers have failed to do so. There is no basis whatsoever for a determination that the notice of proposed assessment is either legally insufficient or factually incorrect.

FINDING

Taxpayers' protest is denied.

II. Voluntary Compliance with the State's Adjusted Gross Income Tax.

Although denied the benefit of taxpayers' more detailed explanation, it would appear that taxpayers believe that Indiana's individual income tax is entirely voluntary. Having arrived at this conclusion, taxpayers decided that they no longer wish to "voluntarily" pay Indiana income taxes. As taxpayers state, "By what law, has the state of Indiana, the right to take a tax payer's, LEGAL IT-40 based on SELF ASSESSMENT by VOLUNTARY COMPLIANCE and changed it to meet the state of Indiana's wants???" (Emphasis in original).

Taxpayers' assertion is apparently based on IC 6-8.1-11-2 which states as follows:

The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (Emphasis added).

Taxpayers' conclusion is unsupported and wholly frivolous. In describing the nature of the complementary federal tax system, the Supreme Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayers' fundamental contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, the state also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that failure to comply with the law is without predictable consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.*" McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (Emphasis added). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

FINDING

Taxpayer's protest is denied.